Remarks/Arguments

Claims 1-14 are pending in this application.

The Examiner rejected claims 1-14 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,256,712 to Challenger et al. (hereinafter "Challenger"), in view of U.S. Patent No. 6,934,761 to Curtis (hereinafter "Curtis"). In order to establish obviousness, the Examiner must consider all of limitations of a claim in determining patentability of that claim against the prior art. M.P.E.P. § 2143.03. All of Applicant's claims, either directly, or through dependency, have recitations that cannot be found in Challenger or Curtis.

Nowhere does Challenger or Curtis discuss: 1) having a server respond to an application protocol request by sending a portion of the response that changes to the client application; and 2) retrieving a part of the response that is static from cache in an operating system kernel and *then* sending the part that is static to the client application. Rather, Challenger only discusses "maintaining updated caches and making consistent updates" to these caches, which are located on a server. *See* Challenger, column 2, lines 53-55. Curtis only discusses a method for managing HTTP caches and transmitting HTTP request data in a web server. *See* Curtis, Abstract.

All of Applicant's claims recite "receiving from the client application" an "application protocol request" and a "response that can be displayed as a combination of a portion of the response that changes and a part of the response that is static." Challenger, by contrast, does not even mention any application protocol request, let alone discuss responding to application protocol requests. Challenger only discusses combining objects into larger objects as an update mechanism for caches. There is simply no need for an application protocol request from a client in Challenger because Challenger teaches that cached objects on a server are "immediately replaced with fresh objects" when they become stale "rather than deleting stale items from the cache." (See Challenger col. 2, line 66 - col. 3, line 1). Additionally, Challenger does not mention static or dynamic portions of responses or even Web pages, only completely static or completely dynamic Web pages.

All of Applicant's claims recite the retrieval of the part of the response that is static from a cache disposed in an operating system kernel. Applicant is at a loss to find this concept disclosed in Challenger. The portions of Challenger cited by the Examiner discuss either a proxy cache or a processor cache, neither one of which resides in a kernel. A proxy cache resides in

user space and a processor cache resides inside the processor hardware. Challenger does not even mention a kernel, let alone an in-kernel cache. The Examiner has suggested that a kernel was "inherent" in Challenger because Challenger mentioned a "computer" and all current computers use an operating system and all current operating systems require a kernel. However, even if this was true, Challenger still does not mention the in-kernel cache or the very specific concept of retrieving a part of a response that is static from a cache disposed in an operating system kernel. For a proper rejection, it is not enough for the Examiner to simply analogize specific claim recitations with portions of the cited reference in a conclusory fashion. The Examiner has suggested that some unwritten "spirit of the design" behind a cited reference can be used to reject a claim over the cited reference under Section 103. However, for a proper rejection under Section 103, the Examiner must consider all of the claim limitations in determining patentability of that claim against the prior art. M.P.E.P. § 2143.03. Applicant respectfully submits that the Examiner has failed to meet this burden.

Further, Challenger does not discuss "sending the portion of the response that changes to the client application and _then_ retrieving the part of the response that is _static_. . . ." Challenger is only interested in constantly updating data content that has _changed_ and validating webpages on the server. Challenger does not discuss sending a portion of the response that changes and _thereafter_ retrieving the portion of the response that the static. Challenger only discusses validating whole webpages. Challenger does not discuss sending portions of a response at separate times. It appears as though the Examiner has ignored these claim recitations directed to time-ordering of the response, which is certainly not taught by any of the cited art.
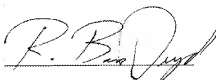
In addition, Challenger only discloses invalidating cached objects in databases. For example, Challenger discusses invalidating cached objects having dependencies on records which have changed, where the records are portions of the database. However, nowhere does Challenger teach or suggest sending a response by sending a portion of the response that changes and then retrieving and sending a portion of the response that is static, as recited in the claims. As previously admitted by the Examiner, Challenger does not even disclose a response. However, the Examiner suggests the webpages in Challenger and Curtis can be interpreted as such response. Nonetheless, Challenger does not teach or disclose creating a webpage with a portion that changes and a portion that is static. Challenger only discloses completely dynamic or

completely static webpages. In light of the above, Challenger cannot render Applicant's claims obvious. Curtis does not remedy the deficiencies of Challenger. Indeed, the webpages discussed in Curtis are all sent at one time and all webpages are also either completely static or completely dynamic webpages. There is no discussion in Curtis of sending a webpage having a partially dynamic portion as well as a partially static portion. Further, there is certainly no discussion in Curtis of sending a response to a request by sending the dynamic portion of the webpage and then retrieving and sending the static portion of the webpage.

For at least the above reasons, Applicant submits that every element of any claim is not taught or suggested by the cited art. Applicant believes he has responded to the concerns raised by the Examiner. Reconsideration of this application, as amended, is hereby requested.

Respectfully submitted,

Date: 7/15/09

R. Brian Drozd
Attorney for Applicant
Telephone: (919) 286-8000   Registration No. 55,130
Facsimile: (919) 286-8199   Moore & Van Allen PLLC
                                             P.O. Box 13706
                                             Research Triangle Park, NC 27709